

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3372 of 1997

with

Civil Application No. 10701 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO LTD

Versus

HEIRS & L.R.OF DECD.JAYANTIBHAI BALUBHAI BARAIYA

Appearance:

MR ARUN H MEHTA for appellants.

MR DIVYESH SEJPAL for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

Date of decision: 27/04/98

ORAL JUDGEMENT (Per A.M. Kapadia, J.)

Admit. Service of notice is waived by learned advocate Mr. Sejpal for respondents. At the request of both the learned advocates for the parties, the matter is taken up for final hearing.

The sole question which has surfaced in this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short hereinafter), challenging the judgment and award dated 6.1.1997, recorded in MACP No. 441 of 1996, by MACT (Main), Bhavnagar, whereby the respondents/original claimants, the unfortunate family members of the deceased Jayantibhai Balubhai Baraiya, whose life came to be cut short at the cruel hands of providence on account of the road accident which had taken place on the fateful day on 14.6.1996 on Rajkot Bhavnagar Highway, by offending matador No. GRV 6672 came to be awarded an amount of Rs.5,96,000 with interest at the rate of 15% from the date of the application till the date of payment with proportionate cost, could be said to be just, fair, reasonable and moderate or is it excessive, exorbitant or on higher side which warrants our interference in this appeal?

To answer the aforesaid question, let us have a look at the facts giving rise to the claim petition.

On the fateful day, i.e., 14.6.1996, the deceased Jayantibhai Balubhai Baraiya who was working as a Clerk-cum-typist with the Taluka Panchayat Office, at Sihore, boarded the offending matador No. GRV 6672 along with goods i.e., grains and utensils, for distributing the same in villages under the Mid-day Meal Scheme. The said vehicle was proceeding on Rajkot-Bhavnagar Highway. When it reached in between Sihore and Songadh village, the driver of the matador drove the vehicle in an excessive speed and in a rash and negligent manner, as a result of which he lost control over the steering and the matador dashed against a tree and thus the accident claiming the life of Jayantibhai was caused. Therefore, it was the case of the original claimants that the cause of the accident was the rash and negligent act on the part of the driver of the vehicle concerned and, therefore, the present respondents/ original claimants, in the capacity of heirs and legal representatives of the deceased, are entitled to compensation and they have claimed Rs.8 lacs by way of compensation, by filing the aforesaid MACP on the ground that the deceased was the sole bread-winner of the family and they were totally dependent upon the income of the deceased.

The petition was resisted by the present appellants/ original opponents by filing written statement, inter alia, contending the usual contentions.

The Tribunal, after recording the evidence and considering the documentary evidence as well as

submissions made at the bar, came to the conclusion that the accident was the result of rash and negligent driving on the part of the driver of the matador involved in the accident. The Tribunal thereafter assessed and determined the amount of Rs.4,000 as the prospective income of deceased. Thereafter the Tribunal deducted amount for the personal upkeepment of the deceased, applied 18 purchase factor and came to the conclusion that the original claimants are entitled to total compensation of Rs.5,96,000 with interest at the rate of 15% per annum and proportionate costs. It is this finding of the Tribunal which is now in the anvil before us.

As observed hereinabove, the sole contention raised by the appellants is with regard to the quantification of the amount of compensation awarded to the respondents/original claimants. It is contended by the learned advocate Mr. Arun Mehta that the Tribunal has considered the income of the deceased on a very high side and also committed grave error in applying 18 purchase factor and, therefore, the award is required to be reduced by awarding a fair and reasonable amount of compensation.

As against this, learned advocate Mr. Sejpal for the respondents/original claimants supported the judgment and award of the Tribunal. According to him, the Tribunal has applied correct principles, assessed the correct income of the deceased and also applied the correct multiplier and, therefore, the impugned award does not warrant our interference.

After having given our anxious consideration to the rival contentions of both the learned advocates for the parties, perused the judgment and the evidence, copies of which have been supplied to us during the course of submissions by the learned advocate for the parties, we are of the opinion that so far as the assessment of the prospective income of the deceased was concerned, the Tribunal has not committed any error. It has come in evidence that the deceased was working as a clerk cum typist in Taluka Panchayat office, at Sihore, and at the relevant time he was drawing a salary of Rs.2481. Exhs.19 and 20 upon which reliance was placed by the Tribunal are pertaining to the appointment order and appointment as typist respectively. From the aforesaid two documents it has come in evidence that the deceased was serving for the last 11 years. There is no reason to disbelieve the aforesaid two documents and the findings

arrived at by the Tribunal on that aspect. This court can take a judicial notice to the fact that now a days government employees are getting handsome salary. Every six months, enhanced dearness allowance is paid and thus the salary gets upward trend. The deceased was 33 years old at the relevant time and had he not met with the unfortunate road accident, he would have served at least 25 to 26 years more before superannuation. Therefore, the Tribunal has correctly considered the prospective income at Rs.4000 which came to Rs.48,000 annually. This assessment made by the Tribunal is just and reasonable and does not require any interference by this Court.

The Tribunal has deducted 1/3 amount by way of personal upkeepment and then assessed the dependency at Rs.32,000 per annum. According to us, this assessment made by the Tribunal is also just and proper.

The only submission which appeals to us is the multiplier adopted by the Tribunal. According to us, the multiplier of 18 years adopted by the Tribunal is not correct. In view of the judgment of the Apex Court in the case of General Manager, Kerala State Road Transport Corporation v., Susamma Thomas, (1994) 2 SCC 176, multiplier should never exceed 15. In view of the aforesaid facts and circumstances and the law laid down by the Apex Court, we are of the opinion that the multiplier of 18 years adopted by the Tribunal can never be accepted by us and it requires our interference.

After taking into consideration the factual situation and the fact that two respondents/original claimants are minors aged about 2 1/2 and 1 year respectively, we find that the overall consolidated amount of compensation of Rs.5,32,000 would meet the ends of justice. Therefore, we reduce an amount of Rs.64,000 from the amount awarded by the Tribunal and instead of RS.5,96,000 as awarded by the Tribunal, we award total compensation of RS.5,32,000 which, according to us, is the just, fair and reasonable amount of compensation.

So far as the direction with respect to the interest is concerned, we confirm the finding of the Tribunal.

In the result, the appeal succeeds partly. The judgment and award passed by the Tribunal is modified and it is ordered that the respondents/ original claimants shall be entitled to recover Rs.5,32,000, instead of Rs.5,96,000 as awarded by the Tribunal, with interest at the rate of 15% per annum from the date of the application till the date of payment, with proportionate costs. Award is

modified accordingly. Modified award to be drawn up accordingly.

Office is directed to remit the amount of Rs.25,000 deposited by the appellants before this Court along with the Appeal under Section 173 of the Act, to the concerned tribunal. The appellant No.1- is directed to deposit the amount of award, as per modified award, before the concerned Tribunal within a period of six weeks hereof.

So far as the apportionment part is concerned, we do not agree with the order passed by the Tribunal. We, therefore, apportion the awarded amount to the share of each respondent/ original claimant, as under:

1. Respondent No.1/ original claimant No.1, widow of the deceased, is entitled to Rs.2,32,000 with proportionate cost and interest thereon.
2. Respondent No.2/ original claimant No.2, minor son of the deceased, is entitled to Rs.1,00,000 with interest thereon.
3. Respondent No.3/ original claimant No.3, minor daughter of the deceased, is entitled to Rs.1,00,000 with interest thereon.
4. Respondent No.4/ original claimant No.4, mother of deceased, is entitled to Rs.1,00,000 with interest thereon.

So far as respondent No.5/ original claimant No.5 is concerned, he is the brother of the deceased, and we hold that he is not entitled to any amount of compensation.

So far as the disbursement and investment is concerned, we give the following directions:

1. From the amount of Rs.2,32,000 with proportionate cost and interest thereon which comes to the share of the respondent No.1/ original claimant No.1, only 10% amount with proportionate cost and interest, shall be paid to her, by way of an account payee cheque, and remaining 90% amount with proportionate cost and interest, shall be invested in Fixed Deposit Receipt initially for a period of seven years in any nationalized bank with a provision that she will be entitled to receive the periodical interest that shall accrue due on the Fixed Deposit Receipt from time to time.

2. So far as the amount of Rs.1,00,000 each with interest thereon which comes to the share of the respondents Nos.2 and 3/ original claimants No.2 and 3 is concerned, the full amount with interest thereon shall be invested in the joint name of the minors and their guardian respondent No.1/ original claimant No.1, in any nationalized bank initially for a period of ten years or till they attain the age of majority, whichever event occurs later point of time. The minors and the guardian are entitled to receive the interest that shall accrue on the fixed deposit receipts periodically, for the welfare and upkeepment of the minors.

3. So far as the respondent No.4/ original claimant No.4, mother of the deceased is concerned, out of the amount of Rs.1,00,000 with interest thereon which comes to her share, only 10% of the amount with interest, shall be paid to her by way of an account payee cheque. Remaining 90% of the amount with interest, shall be invested in her name in fixed deposit receipt in any nationalized bank initially for a period of seven years with a provision that she should get the interest that shall accrue thereon periodically.

The claimants shall not raise any loan, create any incumbrance or take advance or premature encashment of the fixed deposit receipts without prior permission of the Tribunal and the aforesaid direction be mentioned on the fixed deposit receipts and the corresponding entry be made on the ledger of the Fixed Deposit Receipts also.

Accordingly, the appeal is partly allowed. No order as to costs in the appeal.

No order on civil application.